

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DERRICK L. JOHNSON,

:

Petitioner,

v.

:

Case No. 3:15-cv-90

JEFFREY LISATH, Warden,
Pickaway Correctional
Institution,

:

JUDGE WALTER H. RICE

Respondent.

DECISION AND ENTRY ADOPTING REPORT AND
RECOMMENDATIONS ON MOTION TO DISMISS (DOC. #35);
SUSTAINING RESPONDENT'S MOTION TO DISMISS (DOC. #28);
DISMISSING WITH PREJUDICE PETITION UNDER 28 U.S.C. § 2254
FOR WRIT OF HABEAS CORPUS (DOC. #5); DENYING CERTIFICATE
OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*;
JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST
PETITIONER; TERMINATION ENTRY

Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz, in his Report and Recommendations, Doc. #35, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing in its entirety. Although Johnson was informed of his right to file Objections to the Report and Recommendations, and of the consequences of failing to do so, no Objections have been filed within the time allotted.

Given that Johnson's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus, Doc. #5, is extremely untimely, and that Johnson has failed to show that equitable tolling is warranted or that the "actual innocence" exception applies, the Court DISMISSES the Petition WITH PREJUDICE. Magistrate Judge Merz properly concluded that Johnson is not entitled to an evidentiary hearing.

Judgment shall be entered in favor of Respondent and against Petitioner.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: October 2, 2017



WALTER H. RICE
UNITED STATES DISTRICT JUDGE